

Mayor R. E. Bruchey, II called this Work Session of the Mayor and City Council to order at 4:04 p.m., Tuesday, March 13, 2018 in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, A. Heffernan, E. Keller, S. McIntire, and L. C. Metzner, Scott Nicewarner, Director of Technology, Communications, and Support Services, and City Clerk D. K. Spickler. City Administrator Valerie Means was not present.

Kiwanis Park: Renovations to the Saylor House

Rodney Tissue, City Engineer, Merry Stinson and Ann Aldrich, Washington County Historical Trust, were present to provide a review of the work completed by the Washington County Historical Trust (WCHT) at the Saylor House.

In May of 2016, the Mayor and Council approved a Memorandum of Understanding (MOU) regarding the Saylor House in Kiwanis Park. The MOU is with the WCHT and sets forth the terms of the WCHT to renovate and program the structure.

The WCHT provided a Committee Report detailing their accomplishments to-date. They would like to continue the momentum and would request a time extension to the MOU. Staff notes that the City has \$ 30,000 in Program Open Space (POS) funds allocated to the project for extending utility services to the house and constructing the walking path. To keep the POS managers satisfied, the funds should be spent by the end of this calendar year.

Ms. Stinson reported the Saylor family owned the property beginning in the late 1700's. The house has been vacant for more than 60 years. Intact architectural fabric includes skillfully laid limestone walls, quoins and keystone door and window heads; heavy timber framing; original flooring; woodwork and moldings, including chair rails and door and window trim. The original mantel was removed in recent years, but a fragment, as well as a 1976 photo, will facilitate an exact reproduction.

The original floor plan survives unchanged. The Saylor house is historically significant for its well-constructed original features and as an excellent example of an early settlement period Germanic farmhouse in the Cumberland Valley. Despite its derelict appearance after fifty years of neglect, the structure and architectural details are repairable. The site has archaeological potential. Saylor House serves as a showcase of historic preservation.

The City contracted with Scott Bowen, Architect, and Matt Dawn, Structural Engineer, to assess and draw up plans on required work to restore the house in compliance with current codes. This work was paid for by the City and was completed in 2017. The years of debris has been removed by volunteers between October 2016 and June 2017. WCHT was awarded a \$ 5,000 grant from Mary K. Bowman Foundation to repair the roof, install plywood windows and doors, and to repair critical areas of disintegrating mortar. This work will be completed in the spring of 2018.

An archeological inventory will be completed of the kitchen and basement areas, the utility corridor and grounds around the site.

Future work includes the following:

1. Front porch restoration and handicap access
2. Mortar repair
3. Summer beam and associated work
4. Kitchen restoration to functional classroom
5. Window and door restoration
6. Repair and finish interior house floors and staircase
7. Wall restoration in the house
8. Wood work restoration
9. Install HVAC system for building
10. Roof replacement
11. External bathroom facility

WCHT is dedicated to working with the City of Hagerstown to preserve and interpret the history of the building and the site of this early settlement and environmental history. The building, once restored, and with ADA accessibility, will be used by WCHT and other organizations for education events on historic buildings and building trades, environmental and outdoor recreation.

Ms. Aldrich stated the WCHT is seeking an extension of the MOU, which allows WCHT time to raise the required funding and complete the work as noted.

It was the general consensus to include approval of an extension of the MOU on the March 27, 2018 Regular Session agenda.

Warner Hollow Dam/Edgemont Reservoir Project –New Project Estimate

Michael Spiker, Director of Utilities, and Nancy Hausrath, Water Operations Manager, were present to discuss the Warner Hollow Dam/Edgemont Reservoir Project.

In accordance with direction provided by the Mayor and Council regarding the repair and restoration of the Edgemont Reservoir (Warner Hollow Dam), staff is reporting additional findings from the final Study/Evaluation of the Edgemont Reservoir to include additional work required and the revised cost estimate to complete this work.

The end result of the Design Storm Evaluation (required by MDE) of the existing Ogee and Spillway is that it does not meet Dam Safety Standards. The existing ogee and spillway transition, and chute spillway cannot safely pass the Probable Maximum Precipitation (PMP Design Storm). Should the Mayor and Council decide to move forward with this work, the work will result in the removal and reconstruction of the existing concrete structures? The new design will result in a labyrinth weir for the spillway entrance thus increasing the length of the weir from 160 feet to 400 feet. In addition to the labyrinth weir, a new spillway transition, and chute spillway will be

constructed. This will be done in a manner that addresses the ongoing seepage under the existing structure.

The total estimated cost to repair the existing earthen dam and remove and replace the ogee and spillway structures to meet current Dam Safety requirements is \$ 12,553,000. This will result in an estimated project increase amount of \$ 6,745,000. Please note that the new estimate includes \$ 1,945,000 for Engineering Services, \$ 3,978,000 in Construction Contingency and \$ 6,630,000 in actual estimated construction expenses. The Contingency is higher than would be typical of most construction projects because of the ongoing seepage and higher potential for additional work once the concrete structures are removed.

Staff noted the estimate to decommission the reservoir is \$ 4,000,000. If the repair is completed, it will provide redundancy within the system. It was noted this would be the third renovation of this 115 year old earthen dam. The dam has been in a dry state for 18 months.

If the City invests this funding in the Edgemont Reservoir, it will be a priority to maintain it at full capacity. This will also improve the City's appropriation from MDE.

The project schedule will be modified once staff has received additional direction from the Mayor and Council based on the information provided herein and once the City receives the funding ranking/rating from MDE.

As a reminder and directly related to the Edgemont Reservoir restoration and rehabilitation project are the upgrades to the Breichner WTP. While an in-depth engineering evaluation has not been completed, a summary of needed improvements has been completed and the current estimate to upgrade the Breichner WTP is approximately \$ 4.9 million.

Staff continues to work on the Traveling Screen and Tank Mixing Project and will request Mayor and Council approval of the funding documents at the March 20, 2018 meeting. The EWIP project continues to move forward as well and is currently grant funded.

Approval of the funding documents for the Traveling Screen and Tank Mixing Project will be included on the March 20, 2018 Special Session agenda.

Utility Collections/Service Interruption Processes

Scott Nicewarner, Director of Technology, Communications, and Support Services, and Beth Everhart, Utility Customer Service Manager, provided an explanation to the Mayor and Council about the City's current utility and service interruption for non-payment processes.

The electric service termination moratorium period will end on April 1. The regular termination process will begin on April 2, 2018. It is anticipated that 80 terminations per

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day will occur through the first three weeks of April. Due to colder weather in January, electric bills were higher.

Customers are provided information about bill paying assistance from churches, Social Services, and the Community Action Council. During 2017, approximately 3,000 customers received some sort of payment assistance.

Payment arrangements are considered for customers, after reviewing past history.

Mr. Nicewarner urged customers who are unable to pay their utility bills to contact City staff to discuss options or to contact an assistance agency.

Mayor Bruchey suggested placing a notice on social media as well.

Councilmember Aleshire inquired how many accounts are delinquent. Ms. Everhart indicated about 900. He asked if most are homeowners or tenants. It was noted most are tenants.

If a customer with a delinquent account moves in with someone in another City location, the service at their new address will be terminated because of the delinquent amount. Outstanding debt on utility bills is not forgiven. A collection agency has been used to try to collect on the past due amounts. This has not been extremely successful.

Local Conversion District (LCD) – Allegheny Electronics – Potomac Avenue

Stephen Bockmiller, Development Review Planner/Zoning Administrator, was present to review actions taken for the request of a local conversion overlay district rezoning of 1301 Potomac Avenue.

A public hearing was held on February 27, 2018 to receive testimony regarding the proposed local conversion district. Following the hearing, the Mayor and City Council kept the record open for 10 days and introduced the ordinance for rezoning. A draft “findings” document was provided to the point that it could be in advance of receipt of testimony.

At the hearing, one nearby resident testified, expressing concern with the proposed use consuming on-street parking, even though it will have several on-site parking spaces. Staff noted that when the local conversion district provision was added to the ordinance, the issue of parking was discussed. Most buildings that would qualify for this provision have no or little parking. The conclusion was renovation and reuse of these buildings was the preferred result even if it may impact on-street parking.

Councilmember Aleshire asked if a determination had been made regarding his question about what treatments would be permitted within the zoning district uses. Mr. Bockmiller indicated particular subsets could not be prohibited unless specifically noted in the ordinance.

It was the general consensus of the Mayor and City Council to include approval of the ordinance on the March 27, 2018 Regular Session agenda.

Allocation of Community Development Block Grant (CDBG) Funds for Roslyn Building – Rehabilitation of Windows and Roof

Jonathan Kerns, Community Development Manager, was present to request Mayor and Council approval to allocate \$ 200,000 in Community Development Block Grant (CDBG) funding for needed rehabilitation activities at the Roslyn Building. The Roslyn Building's roof and upper floor windows have exceeded their useful life and are in disrepair. CDBG funds are available to assist with these repairs.

According to City records, the City acquired the Roslyn Building in 1996 for \$ 75,000. In 1998-1999, the City expended \$ 850,000 on renovations and upgrades to the building. All acquisition and renovation costs were funded through the CDBG program.

After the acquisition and initial renovations, the property has been maintained through the property management fund. Three commercial spaces are occupied on the building's first floor (City Parking Division, HNPD, and Spickler's Market). The building is currently being marketed for sale through the City's Competitive Negotiated Sale (CNS) Program.

The Roslyn Building's roof and upper floor windows are beyond repair due to age and weathering. The City's cross department property management team has planned for these rehabilitation activities as part of Capital Improvement Project 58-CO770. Repair plans include total replacement of the building's roof and upper floor windows at an estimated cost of \$ 200,000.

The initial funding proposal for this project involved the use of bond financing to cover all costs. After further review, bond financing is no longer being considered for the following reasons: project would not qualify for tax-exempt financing, insufficient cash flow from Property Management Fund to cover the debt service requirements, and project would be on hold until bond financing is completed together with other bond financed projects. Funding is unavailable through the General Fund or Property Management Fund.

CDBG funds are available through the receipt of unanticipated CDBG Program Income and carry over funds from previous CDBG projects that are now complete. Staff have consulted with Federal HUD staff and they have confirmed the project is CDBG eligible. It should be noted that use of CDBG funds for this project would prohibit the building's upper floors from being used for the general conduct of government.

Staff envision the needed repair work beginning in the Spring or Summer of 2018, with all work being completed by Fall of 2018. Completing these repairs will also enhance the building's marketability through the CNS program.

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Councilmember Heffernan asked if the windows will have to be historically renovated. Mr. Kerns noted wood replacement windows will be required. There are no other restrictions he is aware of.

Councilmember Keller asked if the use restrictions transfer with the sale of the property. Mr. Kerns stated restrictions depend on future government use.

Approval of the allocation for this project will be included on the March 27, 2018 agenda.

Action Report: Update on Implementation of the Community's City Center Plan

Jill Thompson, Director of Community and Economic Development, and Kathleen Maher, Director of Planning and Code Administration, were present to review the 2017 Year End Report for the Community's City Center Plan.

The Community's City Center Plan is a 10-year roadmap for eight catalyst projects that will spur development in Hagerstown's City Center. The plan includes detailed annual steps for making these concepts a reality. It creates at least 875 new, permanent jobs, bringing \$ 125 million in new investment downtown.

This is a public-private partnership, where private developers invest 75% of the cost while funding from all levels of government will cover the rest. The City's consultants, Urban Partners, concluded that all of these projects are feasible based on their economic analysis.

The roadmap is the result of broad community input, with the consultants spending over 130 hours collecting feedback from the community.

Two major partnership efforts support multiple catalyst projects:

1. 1 Gigabit Downtown – The City is working in public-private partnership to create a 1 Gigabit Downtown which will support business retention, expansion and attraction. This initiative is supportive of several of the Catalyst Projects.
2. The Urban Improvement Project - the City is working in partnership with Washington County, the Board of Education/Barbara Ingram School for the Arts, the Maryland Theatre, the University System of Maryland at Hagerstown (USMH), other community partners and private developers on the \$ 37 - \$ 42 million Downtown Improvement Project. This initiative is supportive of several of the Catalyst Projects.

Catalyst Project #1 – Office Development and Recruitment:

Goals: To position downtown to compete for new office development using portions of Central Parking Lot to build 154,000 sf across three buildings. The City applied, but did not receive funding from the Maryland Strategic Demolition Fund program for pre-

development work. Next Steps in the Exploratory Phase include Site Analysis, Identification of Incentives, and Cost Outline of the project. This will be followed by a Pre-Development Phase.

Catalyst Project #2 – Maryland Theatre Expansion Project:

Goals: Expand and improve the facility, and grow from 150 to 225 performance days per year, increasing the audience by 60,000 annually.

1. Back of the House upgrades – The Theatre was awarded \$ 175,000 in State Bond Bill funding and it was matched with local Hotel Tax Funding in March, 2017. The back of the house upgrades are complete. Staff and volunteers were trained on the new Fire Alarm System.
2. Expansion of Facility – Theatre Board contracted with Grimm & Parker Architects to design the expansion project. The design is complete and the permit is under review. Initial estimates have come in at \$ 13 million (including \$ 1 million design, \$ 1 million FFE and construction contingency). Connectivity and shared space are being coordinated with the WCPS officials.
3. Support for Expansion of Facility – the Washington County Board of Commissioners and the Mayor and City Council of Hagerstown approved providing \$ 500,000 by each entity towards the architectural services for the expansion of the theatre facility. \$ 5 million of the Governor’s Allocation for the Urban Improvement Project has been earmarked by the County Commissioners for the Maryland Theatre expansion project. The Theatre hired a fund-raising consultant to help them raise the private funding for the project. The fundraising phase is well underway with three main challenges: complete the \$ 7 million capital campaign, determine forward funding mechanism for the pledges of the campaign, and determine forward funding of the State’s \$ 5 million (completed). The Theatre Board is working towards a ground breaking in early Summer, 2018.

Catalyst Project #3 – USMH Expansion Support:

Goals: Support USMH growth from 500 to 750 students through the addition of new program offerings, and capture student housing opportunities with three upper-floor renovation projects. The three upper-floor renovation projects are planned to be implemented separately, in sequence to each other and throughout the 10 year plan.

1. USMH Programming Expansion – creating space at the BB&T Building on W. Washington Street for Hospitality Management Program. Interior demolition complete and lease agreement nearly finalized. Creating space at Walnut Street Clinic Building for Physicians Assistant and Nurse Practitioner Programs.
2. Student Housing – RFP posted for second Student Housing Project in October with a December deadline. There is \$ 200,000 available through a Community

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Legacy Grant. The project includes a rent guarantee with USMH for vacancies. City and USMH staff are reviewing proposals from three property owners.

Catalyst Project #4 – Hotel/Conference Center/Commemorative Park:

Goals: Construct 200-room “Upper Upscale” hotel (ie: Sheraton, Wyndham, and Hilton). Programmed with adjacent 20,000 square-foot conference center. Establish Civil War Heritage Center and Commemorative Park.

1. Exploratory conversations have been held to date.
2. This project is much more long-term in nature.

Councilmember Aleshire asked if the funds for Catalyst Project #1 Office Development are being held for this project. Ms. Thompson indicated there is a mechanism in place to reuse the set aside funding if there is a need. Grant funding is also being sought. Councilmember Aleshire does not see a need to keep the funding on the table. If a prospect does come forward, he expects the elected body would find the funds to assist the prospect.

Councilmember Aleshire noted the Maryland Theatre expansion project and the UIP projects continue to evolve, especially as it relates to the bank property. He pointed out the City is a contributor to the project and not a purveyor of what is happening.

Councilmember Aleshire stated he is not a strong supporter of Catalyst Project #4 especially since the initial thought was to secure the land at the former hospital site. The east end of Hagerstown is a better location for the components of this catalyst project. He likes the idea of developing the Venice hotel property into a high end hotel and link it with a conference center. Including an indoor sports complex in that area may be a good motivator.

Councilmember Keller asked if the downtown hotspots are being marketed. Ms. Thompson noted Main Street promotes this amenity.

Projects #4 - #8 will be reviewed next week.

Discussion on Permitting, Inspections, Code Compliance Review (PICCR) Committee Recommended Changes

Kathleen Maher, Director of Planning and Code Administration, and Paul Fulk, Neighborhood Services Manager, were present to follow up on PICCR’s recommended permit and inspection practice revision ideas, which were presented by Chairman Wes Churchey on January 16, 2018. Staff have gathered information on how other

jurisdictions handle the identified issues, as requested by Councilmember Aleshire. Chairman Churchey and member Michael Stanford were also present.

The following provides information on the issues discussed by PICCR. Several of the revisions recommended by the PICCR require direction or action by the City Council.

1. Issuing Building Permit without Associated Trades Permits (Code Revision)
 - a. City Code amendment adopted in 1998 to require the following:
 - i. Need electrical permit with permit to install swimming pool.
 - ii. Need trades permits with permits to remodel residential buildings.
 - b. Washington County – trades permits required with permits for signs, mobile/modular homes, attached garages, sunroom additions, and swimming pools.
 - c. Frederick County – trades permits required with permit for swimming pools.

Staff would support modifying the language in the code to allow the issuance of building permits without trade permits in place except for the following project types: signs (illuminated), swimming pools, and solar panels. Staff noted that trade permits may have to be addressed in the field as work is being completed.

2. Directing Inspectors to Ignore Code Violations Observed on Permit Inspection (Resolution)
 - a. Staff are cross-trained and have multiple certifications from the International Code Council.
 - b. If safety incidents occur resulting from unpermitted work which was ignored by City staff, in addition to occupants' safety being jeopardized, the City could be liable in any lawsuit.
 - c. If building or trades inspector ignores on permit inspection, it will be picked up on Rental Licensing inspection. Unhappy property manager will then pit one inspector against the other, putting staff in a difficult position.

Councilmember Heffernan asked if the inspection continues or is stopped after an unrelated violation is pointed out. Mr. Fulk indicated if the violation creates an unsafe situation, the work would be stopped. If it is not, the contractor would be allowed to add the work to the permit.

Councilmember McIntire asked how many staff members are cross trained. Ms. Maher indicated all the Code staff is in some manner. They are considered masters in their field and they also have certifications in other disciplines.

Councilmember Aleshire has some concerns about a plumbing expert noting a violation for electrical work. Mr. Fulk indicated staff is trained to identify safety violations.

Blaine Mowen, Chief Code Official, indicated an inspection may be scheduled for something in the basement and the inspector notices incorrect plumbing connections in the kitchen. The inspector will point out the incorrect plumbing.

Councilmember Metzner understands why the corrections are needed, but he does not understand why the plumber would not be allowed to finish installing a hot water heater until the other problem is corrected.

Mr. Mowen stated the hot water heater would be approved. The plumber would be given the option to add the other repairs to the existing permit or to start a new permit.

Ms. Maher stated the PICCR group also discussed the fact that the property owner wants to be part of the decision, rather than letting it up to the plumber.

Councilmember Aleshire has heard that other things are noted during re-inspections by a different inspector. Councilmember Metzner indicated he has heard this repeatedly as well.

Ms. Maher pointed out the projects are not typically static and more work is completed between inspection visits.

Councilmember McIntire stated, as a contractor, she has experienced this.

Mr. Fulk pointed out the Use and Occupancy certificates are issued 98% of the time. The complaints are usually made when work has failed an inspection.

Councilmember Keller understands staff deals with frustrated people. She continually hears from contractors that dealing with other jurisdictions is much easier. Many of these contractors say they will not do business in Hagerstown. This is a problem.

Mr. Fulk stated other jurisdictions may hear the same thing from contractors.

Councilmember Aleshire stated one objective should be to make sure the inspections don't create more inspections.

Councilmember Keller stated she wants the City to do the right thing but not circumvent safety regulations. Developers are frustrated when they work in Hagerstown. The details of code amendments are not as important to her as changing the perception realtors and developers have of doing business with the City.

Councilmember McIntire has talked to a developer who took a \$ 10 million project to another City because of the challenges of working with the City. The developer noted the inspection staff is good but they feel like there is no consistency or reasonableness.

Councilmember Keller suggested developing a marketing/information campaign for the Code and Inspection divisions.

Mayor Bruchey noted the perception problem was evident during one of the first meetings about the Urban Improvement Project. Elected officials urged him to make sure there was not a problem moving forward with the City's inspection division.

Mr. Fulk indicated he and Mr. Mowen meet regularly with contractors to discuss their projects and deadlines.

3. Directing Staff to Issue U&O Permit if Unpermitted Work Observed at Property (Resolution)
 - a. Staff do not hold up U&O if work has reached a point where a Temporary U&O is possible.
 - b. Issuance of Temporary U&Os is quite common on commercial and industrial projects, as certain permitted work or site plan required work remains outstanding.
4. Directing Staff to Allow Field Revisions to Stand Without Architect Input/Plan Revisions (Resolution)
 - a. Architect designed the plans, so staff feel they should advise the City if filed changes are consistent with their plan to meet code requirements.
 - b. How far should staff go in determining whether a field change is a "minor dimensional difference"?
 - c. Per the City Attorney, Maryland Records Retention rules require the City to keep building permit records until the expiration of all possible court proceedings and any applicable appeal period, so staff feel these records should be accurate.
 - d. City receives Public Information Act requests on a regular basis from contract purchasers, etc. seeking permitting information.

The discussion during PICCR revolved around defining "minor dimensional differences." Staff recommend against creating this definition.

5. Directing Staff to Issue Demolition Permit without MDE Review and Sign-off (Resolution)
 - a. Washington County, Frederick County, and City of Frederick do not require MDE sign-off prior to permit issuance.
 - b. Washington County fills out and submits to MDE an intent to demolish form, and then it is up to MDE and the applicant to follow-up

Staff would support a change to the process not requiring MDE approval/sign off on a demolition permit prior to the issuance of a building permit to demolish a structure.

6. Exempting Certain Replacement Work from Permit Requirements to allow handyman to undertake the work rather than a licensed tradesperson (Code Revision)
 - a. Plumbing – staff would support waiving the permit requirement for a sink/lavatory replacement, faucet replacement, shower head replacement, toilet replacement, and dishwasher replacement with the code stating only

a single fixture can be replaced in a property within a year without a permit.

- i. If any of these fixtures are included as part of a remodeling, updating or in conjunction with any other plumbing work, these fixtures shall be permitted and inspected.
- ii. If a multi-unit property is replacing multiple fixtures, all fixtures shall be permitted and inspected.
- iii. This recommendation is consistent with Washington County.
- b. Plumbing – staff recommend against waiving the permit requirement for water heaters no matter the fuel/power source. Washington County, City of Fredrick, Cumberland, and Rockville require a permit for this type of work
 - i. Staff would support waiving the application fee for the replacement of one water heater.
 - ii. If more than one water heater is being replaced within a one year time period, the application fee would be applied.
- c. Mechanical – staff recommend against waiving the permit requirement for replacing existing furnaces, heat pumps, HVAC equipment, etc. Washington County requires a permit for this type of replacement work.
- d. Electrical
 - i. Currently exempt from permits – replacement of equal light fixture, switch, exhaust fan, ceiling fan. Staff recommend against exempting from permits replacement of ceiling light for ceiling fan. Washington County and Frederick County require permits for this work. City of Frederick requires permits if wiring is changed. This recommendation is consistent with Washington County.
- e. Staff recommend against exempting replacement of electrical outlets. State Code requires new outlets to be AFCI protected which staff recommend should be completed by a licensed electrician. Staff recommend that the replacement of a regular outlet to a GFCI outlet be permitted and inspected. Washington County and Frederick County require permits for outlet replacement work. City of Frederick requires a permit only if wiring is changed.

7. Waiving Permit Application Fee for Water Heater Replacement (Admin Order)
Washington County waives the application fee for one water heater replacement. If the City application fee were waived, the permit fee would be reduced from \$ 85 to \$35 for a residential water heater replacement and from \$100 to \$35 for a commercial water heater replacement. \$ 35 covers the appliance permit fee and the City's technology fee.

Councilmember Aleshire is not in favor of the one year time frame for replacing sinks, lavatories, etc. Many things can break at once in the City's older homes.

A large amount of information was covered during this discussion. At the Council's request, staff will return to continue the discussion during the first Work Session in April.

Mayor and City Council Discussion of Board of Zoning Appeals Review of Cell Tower at North Hagerstown High School

Councilmember Heffernan discussed a recent action by the Board of Zoning Appeals. He stated the BZA met on February 21, 2018 and approved an application by Milestone Communications for a variance to increase the maximum sign area from 80 square feet to 1,755 square feet and for a variance to increase the height of a sign from 10 feet to 115 feet for a sign that will hide a wireless communication tower at North Hagerstown High School, which is zoned RMOD (Residential – Moderate Density). Milestone Communications required the sign variances for the reason that, under Article 4, Section I, Subsection 4.1., the maximum square footage for sign faces is 80 square feet and the maximum sign height is 10 feet in the RMOD zoning district.

Several property owners attended that meeting to voice opposition to the sign variances and present reasons why a sign of this size would be an eyesore that would detract from the character of the neighborhood, could contribute to a devaluation of property values, and should not be approved. Additionally, a local realtor entered HUD guidelines into evidence and spoke about the negative impact cellular towers in general can have on surrounding property values. The property owners feel their opposing arguments were largely ignored by the BZA and the application was approved.

The reason the property owners are requesting action by the City Council is not because they didn't get the decision they wanted, but because they feel the BZA (a) failed to follow the Hagerstown BZA Rules of Procedure during the meeting, (b) failed to keep the presentations and discussions focused on the zoning issues at hand (a sign variance) while allowing the majority of the meeting testimony and discussion time to focus on the relative merits of improving cell service in the area, and (c) failed to define how the application for a sign variance complies with the six criteria that are required to approve a variance, as prescribed by the City of Hagerstown Land Management Code Article 4, Zoning Ordinance, Section U.8.b. – Pages 4-117 through 4-118. These three procedural failures skewed the outcome in favor of the applicant.

Councilmember Heffernan then discussed each of the failures noted above in detail. A copy of his prepared discussion is included in the meeting packet.

Councilmember Heffernan stated it is his opinion that the rules were not followed as intended in the case of this Zoning hearing. Since it is the role of the City Council to represent the citizens, as the City's legislative body and enact and enforce all ordinances and resolutions, then it is also their responsibility to make sure that the City's rules and ordinances are enforced equally and fairly at all levels and at all times, regardless of whether they are dealing with a citizen, a City staff member, a City department, board, commission, contractor, or whatever entity they may create or employ in the future. He would like to discuss the roles that Council and the City Attorney should play in appealing the Board's February 21, 2018 decision on Zoning Case No. Z-2018-02.

Councilmember Aleshire then left the meeting.

Mayor Bruchey stated an appeal of a BZA decision is made through the Circuit Court.

Councilmember Metzner pointed out filing an appeal of the BZA decision would be the City suing the City. He is not sure the elected body is an aggrieved party. He does not think the Council has the authority to determine if the process was followed. Appeals of a BZA decision are not heard before the elected body. He suggested discussing this at an open meeting with the City Attorney. He noted the City Attorney acts in an advisory capacity with the BZA. Therefore, the City Attorney would not be able to represent both the BZA and the Council.

Councilmember Keller stated hearings and deliberations have to be conducted equally and fairly for all parties. It appears this was not the case for this hearing.

Mayor Bruchey stated time will be scheduled to discuss this with the City Attorney next week.

Stephen Bockmiller, Development Review Planner/Zoning Administrator, stated the BZA is a citizen body and they reviewed the request for a variance and made a decision based on the established criteria. Milestone Communications could have constructed a monopole without needing a variance from the BZA. Because a sign was being planned as a concealing feature on the pole, the sign regulations also had to be considered. He indicated the BZA struggled with this decision and the meeting was lengthy.

Councilmember Metzner stated there can't be a precedence set where people aggrieved by a board decision appear before the Mayor and City Council with their complaints.

CITY ADMINISTRATOR'S COMMENTS

Scott Nicewarner, Director of Technology, Communications, and Support Services, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember S. McIntire had no additional comments.

Councilmember L. C. Metzner thanked and commended the fire department for their efforts to successfully save a child from a fire recently. This situation was also a testament that more than one firefighter is needed on every truck.

Councilmember A. Heffernan had no additional comments.

Councilmember E. Keller also thanked the firefighters.

Mayor R. E. Bruchey, II had no additional comments.

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There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 6:59 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: April 24, 2018